

**BEFORE THE
FEDERAL MOTOR CARRIER SAFETY ADMINISTRATION**

In the Matter of:

**RESOURCE TRANSPORTATION
OF AMERICA, INC.,**

Respondent.

**Docket No. FMCSA-2008-0158¹
(Southern Service Center)**

ORDER APPOINTING ADMINISTRATIVE LAW JUDGE

1. Background

On February 27, 2008, the Louisiana Division Administrator, Federal Motor Carrier Safety Administration (FMCSA), issued a Notice of Claim to Respondent, Resource Transportation of America, Inc., proposing a civil penalty of \$2,840 for one alleged violation of 49 CFR 177.800(c), for failing to train a hazardous material employee as required by subpart H of Part 172.² The Statement of Charges portion of the Notice of Claim alleged that Respondent failed to provide General Awareness/Familiarization Training pursuant to 49 CFR 172.704(a)(4)(5).³ On March 28, 2008, Respondent replied to the Notice of Claim, denying the allegation, and requesting a formal hearing. Respondent provided a copy of its certification of training, which listed a Transportation Security Administration CD under training materials.⁴ Respondent maintained that it provided this document to the safety investigator.

¹ The prior case number of this matter was LA-2008-0022-US0550.

² See Government Exhibit A to Field Administrator's Notice of Objection to Respondent's Request for Hearing (Notice of Objection).

³ General awareness/familiarization training requirements are set forth at 49 CFR 172.704(a)(1); section 172.704(a)(4) concerns security awareness training, while section 172.704(a)(5) pertains to in-depth security training.

⁴ See Exhibit 1 to Reply.

According to Respondent, the “[i]nformation provided with the CD stated, ‘This training program meets the DOT security awareness training and security assessment requirements as defined in 49 CFR 172.704(a)(4) and 49 CFR 172.802.’”⁵ Respondent also argued that videos and individual training certificates, which the safety investigator wished to see, are not required by the regulations.

On May 29, 2008, Claimant submitted his Notice of Objection to Respondent’s Request for Hearing (Notice of Objection), in which he stated that he “believes there is no material factual dispute identified in Respondent’s Reply that warrants a hearing.” He further stated his belief that “[t]he affirmative defenses raised by Respondent ... may be decided on the written record and, thus, [he] will submit a Motion for Final Order pursuant to 49 C.F.R. § 386.36.”⁶ Claimant also contended that the Rules of Practice limit the opportunity for hearing by requiring the Assistant Administrator to determine whether any material facts are in dispute before setting a case for hearing.

2. Discussion

Under the Rules of Practice in effect since November 14, 2005 (revised Rules of Practice),⁷ Claimant has 60 days from the date of service of the Reply in which to serve a consent or objection with a basis to a request for a hearing. “Failure to serve an objection within the time allotted may result in referral of the matter to hearing.”⁸ Although the revised Rules of Practice require that the Field Administrator serve a Motion for Final

⁵ Section 172.802 pertains to the components of a security plan, including an assessment of possible transportation security risks for shipments of certain hazardous materials.

⁶ Approximately one year has passed since Claimant stated he would submit a Motion for Final Order. He has yet to submit it.

⁷ FMCSA revised its Rules of Practice, effective November 14, 2005. The revised Rules of Practice apply to all matters, including this one, in which a Notice of Claim is served on or after the effective date. 70 Fed. Reg. 28467, 28468 (May 18, 2005).

⁸ See 49 CFR 386.16(b)(2).

Agency Order following his filing of an objection with basis, no time limit for that pleading is provided.⁹

Prior Agency decisions have found that the objection with basis must provide the decisionmaker with a sufficient explanation of Claimant's issues in order to render the need for the imposition of a strict time period to file the motion for final agency order unwarranted.¹⁰ Claimant did not do this. While Claimant's summary of the Reply showed that Respondent set forth the issues, Claimant merely provided his belief that there is no material factual dispute identified in the Reply that warrants a hearing without explaining, even in summary fashion, why not. Claimant's stated basis is nothing more than a conclusion that a hearing is not warranted and, as such, equates to a failure to submit a timely objection with basis.¹¹ As a result, in accordance with 49 CFR 386.16(b)(2), the matter may be, and is, referred to the U.S. Department of Transportation's Office of Hearings.¹²

⁹ See 49 CFR 386.16(b)(3).

¹⁰ See *In the Matter of MIO Transportation, LLC*, Docket No. FMCSA-2009-0058, Order Appointing Administrative Law Judge, March 13, 2009, at 4; *In the Matter of Morning First Delivery, Inc.* Docket No. FMCSA-2008-0090, Order Appointing Administrative Law Judge, June 9, 2008, at 4; *In the Matter of U.S. Intermodal Corp.*, Docket No. FMCSA-2006-25248, Order Appointing Administrative Law Judge, April 4, 2008, at 3-4; *In the Matter of Sabek Transportation, Inc.*, Docket No. FMCSA-2007-29338, Order Appointing Administrative Law Judge, March 12, 2008, at 5.

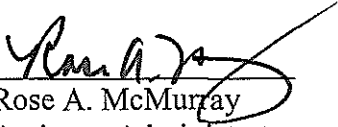
¹¹ *Id.*

¹² Moreover, the issues in this matter are clearly in dispute, warranting a hearing under 49 CFR 386.16(b)(1). Even if they were not, Claimant is wrong in his contention that the opportunity for hearing is limited to a determination by the Assistant Administrator of the existence of material facts in dispute. In accordance with 49 CFR 386.16(b)(4)(C), "[n]othing in this section shall limit the Assistant Administrator's authority to refer any matter for formal hearing...."

3. Appointment of Administrative Law Judge

In accordance with 49 CFR 386.54, an administrative law judge is hereby appointed, to be designated by the Chief Administrative Law Judge of the Department of Transportation, to preside over this matter and render a decision on all issues, including the civil penalty, if any, to be imposed. The proceeding shall be governed by subparts D and E of 49 CFR Part 386 of the Rules of Practice and all orders issued by the administrative law judge.

It Is So Ordered.


Rose A. McMurray
Assistant Administrator
Federal Motor Carrier Safety Administration

5.29.09
Date

CERTIFICATE OF SERVICE

This is to certify that on this 2nd day of June, 2009, the undersigned mailed or delivered, as specified, the designated number of copies of the foregoing document to the persons listed below.

Ronald G. Ashby
Ashby Transportation Consultants, LLC
939 Westcliff Court
Westminster, MD 21158
(401) 562-8197 (phone)

One Copy
U.S. Mail

Paul Wagner
Resource Transportation of America
Post Office Box 1229
Cameron, LA 70631-1229

One Copy
U.S. Mail

Deborah Stanziano, Esq.
Trial Attorney
Office of Chief Counsel (MC-CCE)
Federal Motor Carrier Safety Administration
1800 Century Blvd., Suite 1700
Atlanta, GA 30345
(404) 327-7375 (phone)
(404) 327-7359 (fax)

One Copy
U.S. Mail

Darrell L. Ruban, Field Administrator
Southern Service Center
Federal Motor Carrier Safety Administration
1800 Century Boulevard, Suite 1700
Atlanta, GA 30345

One Copy
U.S. Mail

Sterlin D. Williams
Louisiana Division Administrator
Federal Motor Carrier Safety Administration
5304 Flanders Drive, Suite A
Baton Rouge, LA 70808

One Copy
U.S. Mail

The Honorable Ronnie A. Yoder
Chief Administrative Law Judge
Office of Hearings, M-20
U.S. Department of Transportation
1200 New Jersey Avenue, S.E.
East Building Ground Floor
Room E12-320
Washington, D.C. 20590

One Copy
Personal Delivery

FMCSA-2008-0158

U.S. Department of Transportation
Docket Operations, M-30
West Building Ground Floor
Room W12-140
1200 New Jersey Avenue, S.E.
Washington, D.C. 20590

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